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Utah Department of Health

April 2005

SECONDHAND SMOKE GUIDANCE FOR APARTMENTS AND CONDOMINIUMS

SHS (Secondhand Smoke)

There are 53,000 people who die each year as a result of SHS exposure.² Additionally, hundreds of thousands more suffer various other illnesses, such as asthma, or bronchitis.

SHS from one housing unit may seep through cracks, or travel by a shared ventilation system and enter into the living space of another. This drifting smoke can make a home uncomfortable and an unhealthy place to live.

Smoke-free apartments or condominiums are not only a good health policy, but make sense legally.

The law allows owners and managers to prohibit smoking in any unit(s) or building(s).

Managers and owners who ignore the issue of smoke, face a growing likelihood of lawsuits by tenants suffering from the effects of SHS exposure.



SHS can make a home uncomfortable and an unhealthy place to live

Benefits of a Smoke-free Apartment or Condominium

The greatest benefit of a smoke-free facility is the elimination of the health risks associated with SHS. In addition:

- * Making rental units smoke-free can save money by reducing the damage that smoke causes e.g. extra cleaning costs, painting

costs, and property damage such as cigarette burns on carpets.

- * Smoke-free units reduce fire damage, which may also reduce insurance costs.
- * Adopting a smoke-free policy attracts tenants because there is a market for smoke-free housing.³

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Secondhand Smoke Facts

- Environmental Tobacco Smoke has been classified as cancer causing and is considered a "nuisance" under Utah state law.
- More than 4,000 chemicals are found in a single puff of smoke.¹
- Secondhand smoke kills 53,000 Americans every year.²

Creating a Smoke-free Apartment or Condominium

A smoke-free apartment or condominium can be accomplished in two ways: a voluntary policy or through an ordinance.

Voluntary Policy

A voluntary policy is a policy made by an owner, manager(s) or property management company in which they voluntarily decide to prohibit



smoking in an individual unit, or in an entire building that may be leased, owned or rented. A voluntary policy could also prohibit smoking in common areas, patios, and balconies.

Ordinances

An ordinance is a law that is enacted by state and local city or county authorities. A local entity may pass an ordinance to define

and regulate conduct that is detrimental to the public health safety and well being of its community.

In 1997, the State of Utah enacted the Secondhand Smoke Amendments which established that smoking is a nuisance under the law, and gave apartments and condominiums the authority to prohibit smoking in units common areas, or on the premises.

Voluntary Policy

- * Talk about going smoke-free. As a manager or owner you can discuss with your tenants ways to make their environment smoke-free.
- * Don't allow smoking in your apartment or condominium. Politely ask individuals to smoke outside, away from entrances and air intakes.
- * Amend the rental lease, or condominium association

- agreement. Include language so tenants are aware of the smoking policy and their obligations not to smoke or allow others to smoke in the unit.
- * If you allow smoking, specify in the lease where smoking is allowed.
- * Make signs available that indicate a smoke-free environment. Remember you

- are targeting a behavior that annoys other tenants and causes health problems. If there is more than one building in a complex, designate buildings as "smoking" and "non-smoking."
- * Offer incentives to support a smoke-free policy. For example, moving into a freshly painted unit helps to create a smoke-free building.

Implementing A Voluntary Policy

There are numerous ways to implement a voluntary policy in your unit or complex.

Phase In: Consider phasing in smoke-free units in all or part of the building(s). When a smoker vacates, simply rent as a "smoke-free" unit. Smoke-free policies can also be grandfathered in.

Designate specific areas as smoke-free: Separate levels, patios, areas where children play

or hallways can be designated for smokers and non-smokers. Select the area with the smallest number of smokers to become the non-smoking area.

Prohibit smoking in common areas: Common use areas such as hallways, balconies, doorways, playgrounds, swimming pool areas etc., can be designated smoke-free.



Include an additional security deposit: Require an additional security or cleaning deposit for smokers. This will cover additional cleaning expenses caused by smoke damage.

Secondhand Smoke Amendments

The secondhand smoke amendments were passed by the Utah State Legislature in 1997. These amendments apply specifically to tobacco smoke that drifts into any residential unit a person rents, leases, or owns from another residential or commercial unit.

The amendments:

- * Give authority to condominium associations to restrict smoking in units, common areas, and yard space §57-8-16-7(a)(b).
- * Give authority for apartment rental contracts to include

prohibitions on smoking in units, on the premises, or both §57-22-5-1(h).

- * Establish that any tobacco smoke that drifts into any residential unit a person rents, leases, or owns is a nuisance under the law §78B-6-1101(3).
- * Provide that residents of condominiums, apartments, or private homes may seek injunctive relief and/or damages if exposed to nuisance tobacco smoke §78B-6-1101(3).
- * Exempt rental units, such as for vacation or available for only 30 days or less at a time, from the nuisance tobacco provisions §78B-6-1101(4)(a) (5)
- * Provide authority for an apartment renter to file a nuisance action under §78B-6-1101-(6) even if the renter has signed away his rights to file a nuisance.

Steps for Promoting Smoke-free Policies

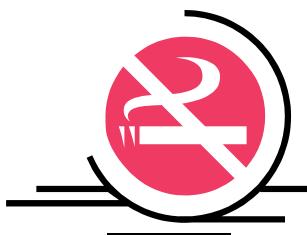
- * Know the facts about the dangers and health effects of secondhand smoke.
- * Talk to residents and building owners. Find out their overall attitudes about smoking and if they support smoke-free areas. Consider a door-to-door survey.
- * Raise awareness about the problem of SHS in apartments and condos.
- * Include tenants in developing a plan to eliminate SHS. Present survey results and facts on the harmful effects of secondhand smoke.
- * Notify tenants of the plan. Send each unit a written notice of the new policy.
- * Implement the new policy. Post the policy in common areas and include the smoke-free requirements in rental and/or lease agreements.
- * Post "No Smoking" signs in appropriate areas.

Talk to residents to determine overall attitudes about smoking

How to Reduce Secondhand Smoke

As an owner or manager, there are repairs and changes that may reduce your tenants exposure to SHS. These changes will help to reduce the health risks associated with SHS exposure, but **will not** eliminate the drift of smoke **100%**.

- * Post "No Smoking" signs in areas where smoking is not allowed.
- * Weatherproof doors and windows to help stop smoke from getting in or out.
- * Install pads and seals around outlets and switches.
- * Fill openings in floors and walls: Foam is good for filling and sealing cracks and gaps around openings.
- * Ask smokers to restrict smoking by not smoking near openings or windows.



Post "No Smoking" signs in areas where smoking is not allowed



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RETURN SERVICE REQUESTED

The TRUTH

Frequently asked questions about Smoke-Free Housing

1. Why are smoke-free apartments legal? The rights of non-smokers to be free from exposure to SHS is protected by both legislation and laws. There are federal and state laws protecting non-smokers. Advertising "smoke-free" or "no-smoking" is also legal.

2. Would a smoke-free policy legally and unfairly discriminate against smokers? No. The privilege to smoke or not to smoke is not a right that is protected under the Civil Rights Act because smokers are not a protected class under federal law.

3. Would I lose money if I implement a smoke-free policy? You could actually save money with a smoke-free policy. Smoking is the cause of a variety of expensive property damages, ranging from extra cleaning costs to fire-related repairs. It can cost up to twice as much to prepare or repair a unit to rent that a smoker has lived in.

4. Would a smoke-free policy instigate a lawsuit from an angry smoker? You will more likely face a lawsuit from a frustrated non-smoker than from a smoker. Legal cases involving various apartment dwellings throughout the U.S. have been filed and won by tenants.



**Smoke-free housing
is legal under the law**

5. Would enforcement of a smoking ban be difficult?

Once you implement a policy, smoking would be so noticeable that others would report it. You would use the same policy you use for other violations of the rules.

References:

1. www.CDC.gov/tobacco
2. Glantz, S.A. & Parmley, W., "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry," *Circulation*, 1991; 83(1): 1-12.
3. <http://www.tcsq.org/sfelp/home.htm>